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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/015,494	12/12/2001	Richard A. Seal	768	6547

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EXAMINER

MAMMEN, NATHAN SCOTT

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 07/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Applicati n No.

10/015,494

Applicant(s)

SEAL, RICHARD A.

Examiner

Nathan S Mammen

Art Unit

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-- The MAILING DATE of this communication appears n the cover sheet with the correspondence address --  
Period f r Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 21 April 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disp sition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachm nt(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Holub (U.S. Patent 4,044,843).

The Holub '843 patent discloses a spreader/grader comprising first (16) and second (18) runner having forward edge portions, a bottom edge portions, and an aft edge portions. The first and second runners are spaced in parallel relation to each other. The grader includes a blade support having a first end portion and a second end portion attached to the first and second runner, respectively. A moldboard (50) is pivotally attached to the blade support. First (55) and second (53) blades having a cutting surface are attached to the moldboard. The blades are attached to the moldboard such that the cutting surface of the first blade faces toward the forward edge portion of the runners and the cutting surface of the second blade faces toward the aft edge portion of the runners (Fig. 2). When forward motion is imparted, the moldboard undergoes pivotal movement so that the first blade is placed in operative connection with the surface (Fig. 2, solid lines), and when aft motion is imparted, the moldboard undergoes pivotal movement such that the second blade is placed in operative connection with the surface (Fig. 2, phantom lines). When the runners are in the operative position, motion of the spreader/grader in the forward or rearward direction causes the moldboard to undergo pivotal movement to place the

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first or second blades in the operative position, respectively. Although the spreader/grader of the Holub '843 patent includes a hydraulic cylinder (72) for actuating the blade, the contact of the blade with the ground will also inherently cause the blade to rotate.

Regarding claims 3 and 4: The cylinder (72) provides a first and second means for arresting pivotal motion, i.e., each end of the stroke of the cylinder (each end wall) stops pivotal movement. The first and second means arrest pivotal movement such that the blade is oriented for particular work to be performed.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2, 6, 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holub (U.S. Patent 4,044,843) in view of Conley (U.S. Patent 1,373,799).

The Holub '843 patent discloses the spreader/grader, as stated in paragraph 2 above, including a rigid member (14) disposed between the runners. What the Holub '843 patent does not disclose is that the spreader/grader having a first and second shoes attached to the first and second runners, respectively. The Conley '799 patent teaches that it is known in the art to provide runners (1) with ground-engaging shoes (2) rigidly attached to the bottom edge of the runner. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the spreader/grader of the Holub '843 patent with the shoes as

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taught by the Conley '799 patent, in order to provide an improved wear surface for the spreader/grader.

5. Claims 8-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holub (U.S. Patent 4,044,843).

The Holub '843 patent discloses the claimed invention, as stated in paragraph 2 above, except for explicitly stating that the moldboard undergoes pivotal movement without the exertion of a force other than that caused by the moldboards interaction with the ground or that the spreader/grader has no hydraulic cylinder for actuating the blade. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to cause the moldboard to undergo pivotal movement without the exertion of the hydraulic cylinder. As the Holub '843 patent discloses, tractors for carrying the spreader/grader have hydraulic systems that include a neutral, or float, mode in which the device to which the hydraulic cylinder is attached is allowed to respond to external forces with minimal resistance by the hydraulic cylinder (see col. 4, lines 48-62). Although the Holub '843 patent discloses using the float mode for the vertical adjustment, it is well known in the art that all the tractor's hydraulic connections for attached machinery include a float mode. Accordingly, it would have been obvious to one having ordinary skill in the art to operate the spreader/grader in the float mode in order to allow the moldboard to change directions in response to the changed direction of movement of the tractor without requiring the operator to actuate a lever. Furthermore, it would have been obvious to one having ordinary skill in the art to remove the hydraulic cylinder from the Holub '843 patent, since the Holub '843 patent would still function effectively (although a user would have less

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control) and the removal of the hydraulic cylinder would save costs and reduce the hydraulic demands on the tractor.

6. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holub (U.S. Patent 4,044,843) in view of Conley (U.S. Patent 1,373,799).

The combination of the Holub '843 and Conley '799 patents discloses the claimed invention, as stated in paragraph 4 above, except for explicitly stating that the moldboard undergoes pivotal movement without the exertion of a force other than that caused by the moldboards interaction with the ground or that the spreader/grader has no hydraulic cylinder for actuating the blade. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to cause the moldboard to undergo pivotal movement without the exertion of the hydraulic cylinder. As the Holub '843 patent discloses, tractors for carrying the spreader/grader have hydraulic systems that include a neutral, or float, mode in which the device to which the hydraulic cylinder is attached is allowed to respond to external forces with minimal resistance by the hydraulic cylinder (see col. 4, lines 48-62). Although the Holub '843 patent discloses using the float mode for the vertical adjustment, it is well known in the art that all the tractor's hydraulic connections for attached machinery include a float mode. Accordingly, it would have been obvious to one having ordinary skill in the art to operate the spreader/grader in the float mode in order to allow the moldboard to change directions in response to the changed direction of movement of the tractor without requiring the operator to actuate a lever.

Furthermore, it would have been obvious to one having ordinary skill in the art to remove the hydraulic cylinder from the Holub '843 patent, since the Holub '843 patent would still function

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effectively (although a user would have less control) and the removal of the hydraulic cylinder would save costs and reduce the hydraulic demands on the tractor.

***Response to Arguments***

7. Applicant's arguments filed 4/21/03 have been fully considered but they are not persuasive.

As stated above, the movement of the tractor when the spreader/grader is in contact with the ground causes the moldboard to pivot about the axis. Thus, claims 1 and 3-5 are still anticipated by the Holub '843 patent. Furthermore, it would have been obvious to place the tractor's hydraulics in the neutral float mode when operating the spreader/grader. Finally, it would have been obvious to remove the hydraulic cylinder (72) all together if the operator determined that the precise control afforded by the cylinder was not necessary. The removal of the cylinder would be motivated by costs (during initial construction, as well as the need to use the hydraulic cylinder for other applications around the far). Removal of structure has been upheld as obvious. See In re Larson, 340 F.2d 965, 144 USPQ 347 (CCPA 1965), "If this additional feature is not desired, it would seem a matter of obvious choice to eliminate it and the function it serves."

***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

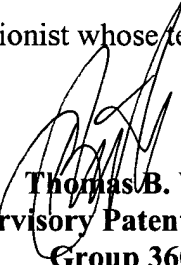
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A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan Mammen whose telephone number is (703) 306-5959. The examiner can normally be reached Monday through Thursday from 6:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached at (703) 308-3870. The fax number for this Group is (703) 305-3579.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-1113.

  
**Thomas B. Will**  
**Supervisory Patent Examiner**  
**Group 3600**

**NSM**  
**7/14/03**

**Nathan S. Mammen**